TECHNICAL ASSISTANCE – VOLUNTARY SEPARATION INCENTIVES IN LIEU OF LAYOFF

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised March, 2004.

With the passage of the Total Compensation bill (HB03-1316), two separation incentive programs are no longer needed. As of July 1, 2003, the authority for the voluntary separation incentive program is under the state personnel director who conducted rulemaking to consolidate the programs under Director's Administrative Procedures effective January 1, 2004.

The state personnel system offers a financial incentive program to employees who voluntarily separate in lieu of or to avoid layoffs. The purpose of the program is to save costs and minimize the impact from layoffs of permanent employees. The following chart outlines the basic parameters of the program.

Note: The term "department director" has the same meaning found in rule and procedure, i.e., executive director of a department or president of a higher education institution.

Purpose. As an alternative to a layoff in process or anticipated. May be used for any layoff to achieve <u>permanent</u> reductions in personal services. The program is not a retirement incentive.

Authority. Department director authorizes use of the program in the organization to avoid layoffs or eliminate further bumping, and result in savings.

Use. Discretionary. May be offered to an employee(s) at any time during or in anticipation of a layoff (e.g., layoff notice or creation of a reorganization plan involving layoffs).

The program must result in savings and eliminate the need for layoff or further bumping. Savings must be realized in the next fiscal year and be greater than the cost of the separation incentive and leave payout.

Formal Written Plan. Required. It may be designed as needed and must be approved by the department director <u>prior to</u> implementation.

The approved plan should be communicated to employees. If the incentives are to be offered to groups of employees only (e.g., division, unit, a class or classes), the department must consult with legal counsel before communicating to employees.

In creating a plan, consider the assurance of fund availability and savings, the ability to fund it from existing base appropriations, and that the plan is in the best interest of the state and department. Recommended elements of plan:

- Overview of the layoff conditions under which the department is or would consider use of separation incentives.
- How the department will apply the state personnel director's parameters, guidelines, and procedures; any established executive branch policy (e.g., policy of March 10, 2003); the specific criteria to be used to calculate incentive amounts; and, requirements for justification. Departments are strongly encouraged to develop and use a consistent practice.

- Process to initiate the incentive program and finalize offers, including specifying required approvals, deadlines to apply, and how recipients will be selected.

- Time frame for an employee to consider, seek advice, and clarification and accept an offer.

Individual Written Contract. Required before separation and payment. Use the attached form developed by the Attorney General's Office, the State Controller's Office, and the Division of Human Resources. It contains the necessary contents of a contract.

Departments need to contact legal counsel for additional language if incentives are not offered to all employees in the department or if the attached form is not used. Various state and federal laws mandate that certain provisions be included for the contract to be valid and enforceable. There are some rights and benefits that are not legal for an employee to waive and an agreement to do so would not be binding.

These agreements are subject to approval by the State Controller's Office like any other contract.

Amount. Calculate using the current base salary rate in effect on the last day of employment. The state personnel director and any further executive branch policy set the limits. These limits are published in the compensation plan or notice as determined by the director. For example, applying the executive branch policy of 3/10/03 and the state personnel director's directives in the compensation plan of 7/1/03, the amount is no more than one week's current pay for each full, uninterrupted year of service, not to exceed 13 weeks or 25% of current annual salary.

Reporting. As requested by the state personnel director or the state controller.

Other. Retain privilege of reinstatement unless the parties agree otherwise. Retain payout of leave to the extent allowed.

VOLUNTARY SEPARATION INCENTIVE AGREEMENT

On this date, ____________________, the parties to this Agreement, the _________________________________, (hereinafter "the Employer"), and _________________________________, (hereinafter "the Employee"), enter into this Voluntary Separation Agreement waiving all retention and reemployment rights, (hereinafter this "Agreement"), under the following terms, conditions and circumstances.

RECITALS

The Executive Director has determined that the Employer has excess personnel based upon lack of funds; and,

The Executive Director has established a voluntary separation incentive plan, in anticipation of lack of funds or reorganization, pursuant to State Personnel Board Rule R-7-23; and

This Agreement is consistent with the Personnel Director's Administrative Procedures P-3-51, P-3-52, and P-3-53; and

This Agreement is consistent with the Employer's separation incentive plan; and

The Employee has retention and reemployment rights; and

The Employee desires to waive such retention rights only, or both retention and reemployment rights, as specified below, in exchange for the payment of money by the Employer, in accordance with Personnel Director's Administrative Procedure P-3-51; and

The amount paid to the Employee in exchange for such waiver is within parameters established by the state personnel director for the current fiscal year, as required by Personnel Director's Administrative Procedure P-3-53.

THEREFORE, the parties agree to the following:

1. Both the Employer and the Employee agree that it is in their mutual best interests to enter into this Agreement, which provides a financial incentive to the Employee for voluntarily waiving all retention and reemployment rights.

2. The Employee is a permanent employee classified under Article XII, § 13(2) of the Colorado Constitution, holding position # __________.

3. The Employee hereby voluntarily waives retention and reemployment rights and resigns his or her position.

4. The date of the Employee's separation from state service will be ________________, 2004. The date of the Employee's last day of work will be __________________, 2004.

5. Payment under this Agreement shall not be due, nor shall payment be made, until the tenth (10th) day after the effective date of this Agreement, or on the date of the Employee's last day of employment in his/her current position, whichever is later, and then only provided that the Employee has complied with the terms and conditions of this Agreement through his/her last day of employment.

6. The Employee shall be paid a total of _____________ dollars, a benefit to which the Employee is not otherwise entitled in exchange for his/her waiver of retention and reemployment rights. Pursuant to §24-50-110 (c), CRS, the amount paid to Employee must be paid from the Employer's personal services appropriation.

7. The parties agree that it is the responsibility of the Employee to pay when due all applicable taxes on the entire cash settlement received under this Agreement.

8. The Employee acknowledges that the Employer shall withhold taxes in accordance with applicable law from the entire cash settlement received under this Agreement.

9. By accepting this offer of a cash settlement for voluntary waiver of retention and reemployment rights, the Employee expressly waives his/her rights under the state personnel system or other federal and state employment rights, at law or at equity, including rights or claims arising under the Age Discrimination in Employment Act, (hereafter "ADEA"), 29 U.S.C. §621, et seq., and the Colorado Anti-Discrimination Act of 1957, §24-34-301, et seq., C.R.S., except those rights in the nature of benefits otherwise payable pursuant to law following separation from service. The Employee is eligible for reinstatement or reappointment in accordance with State Personnel Board Rules P-4-7 and P-4-8.

[The Employee acknowledges that he/she has received notice, pursuant to 29CFR1625.22, the ages and job titles of each person eligible or selected to participate in this voluntary incentive program]. (This is the optional paragraph).

10. With regard to any rights or claims arising under 29 U.S.C. §621, et seq., the Employee understands that he/she has had a period of at least 45 days within which to consider this Agreement, and;

The Employee understands that he/she has seven (7) days following his/her execution of this Agreement to revoke the Agreement to the extent that it waives and releases those rights or claims. The Employee understands that this Agreement is not effective or enforceable with respect to the waiver or release of those rights or claims until after the seven (7) day period. If the Employee elects to revoke this Agreement with respect to his/her waiver of rights or claims arising under the ADEA, he/she must advise the Employer by delivering a written notice of revocation to ___________________, Office of the Attorney General, no later than 5:00 p.m. on the seventh (7th) calendar day after the date on which this Agreement was entered into. Such revocation shall terminate this Agreement immediately as to claims under the ADEA, but shall not affect the Employee's waiver or release of any other rights or claims.

11. Each party has had the opportunity to consult with legal counsel with respect to this Agreement. The parties expressly acknowledge that they enter into this Agreement knowingly and voluntarily, without coercion or undue influence, or consideration other than the cash settlement payable under this Agreement. This Agreement is for the mutual benefit of both parties after

negotiations between them and shall not be construed against either party on the basis of which party drafted it. The Employee specifically acknowledges that the separation is voluntary and not coerced or obtained through means other than the terms of this contract.

12. This Agreement is the complete integration of all understandings between the parties concerning waiver of retention, or reemployment and retention, rights. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent addition, deletion, or other amendment, except as mutually agreed to in writing by both parties, shall have any force or effect.

SPECIAL PROVISIONS

13. This Agreement shall not be deemed valid until it shall have been approved by the State Controller or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

14. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Nothing contained in any provision incorporated herein by reference which purports to negate this provision, or any other provision in whole or in part, shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent it is capable of execution.

15. At all times during the performance of this Agreement, the Employee shall strictly adhere to all applicable federal and state laws, rules and regulations that have been or may hereafter be established.

16. The signatories aver that, to their knowledge, other than the Employee who is a party to this Agreement, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

17. Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

18. The effective date of this Agreement is the date of approval by the State Controller.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

FOR EMPLOYEE	**FOR EMPLOYER**
______________________________	______________________________
Full Legal Name	
______________________________	______________________________
Signature	Signature
________________________	
Social Security Number	

FOR THE ATTORNEY GENERAL	**STATE CONTROLLER**
______________________________	______________________________
By:	By:
__________________________	__________________________
Date:	Date: